CF 100/-

(4)

THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

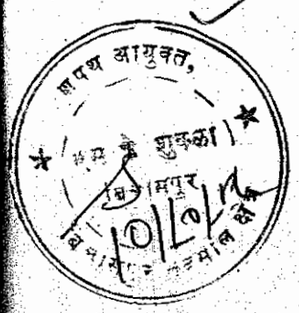
W.P. 2107 /2002

tioner : Radheshyam Sharma S/o Pandit Rameshwar Prasad Sharma, aged about 56 years Chairman, Dist : Co-operative Central Bank Ltd., Raipur, R/o Samtha Colony, Raipur, Dist : Raipur – (C.G.)

Versus

pondents :

1. Madhya Pradesh State Co-operative Tribunal Bhopal, Old Assembly Building, Bhopal-(M.P.)
2. The Registrar Co-operative Societies Raipur, Krishak Nagar Labhandi Firm, Raipur – (C.G.)
3. The Joint Registrar Co-operative Societies, Raipur Krishak Nagar Labhandi Firm, Raipur – (C.G.)
4. The District Co-operative Central Bank, Raipur, Through its Managing Director.



WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. No. 2107/02 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	27.04.2004 Shri P. Diwakar, counsel for the petitioner. Shri Satish Gupta, Deputy Government Advocate for the State/respondent No.1 to 3. None appears on behalf of respondent No.4. Shri Manindra Shrivastava, counsel for Intervener-Shri Shesh Narayan Shukla. This order shall govern the disposal of I.A. No.2172/2004 filed on behalf of the petitioner for withdrawal of the writ petition, in which it has been mentioned that the present writ petition has been filed challenging the legality of the order dated 22.10.2002 which has been set aside by the Registrar, Co-operative Societies, Raipur vide order dated 02.04.2004 and the petitioner has again joined as Chairman, District Co-operative Central Bank Ltd., therefore, at this stage, the petitioner wants to withdraw this petition with a liberty to file the same if occasion so arises. Initially, this writ petition bearing No.2107/2002 was filed by the petitioner against M.P. State Co-operative Tribunal, Bhopal, Registrar, Co-operative Societies, Raipur, Joint Registrar,	

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Co-operative Societies & District Co-operative Central Bank challenging the legality and propriety of the notice dated 21.03.2001 issued by the Joint Registrar, Co-operative Societies, Raipur. However, later on Tribunal also dismissed the revision filed by the petitioner vide order dated 28.11.2001 which was also challenged and later on Joint Registrar, Co-operative Societies vide order dated 22.10.2002 removed the petitioner from the post of Chairman of District Co-operative Central Bank, Raipur and also from the post of ex-officio Chairman of the Staff Sub-Committee of the Bank. Therefore, by seeking amendment this order has also been assailed in this writ petition.

In the meantime, an application for intervention i.e. M.W.P. No.896/2004 was filed on behalf of Shri Shesh Narayan Shukla in which he has prayed to stay the effect and operation of the order dated 02.04.2004 passed by the Registrar, Co-operative Societies, Chhattisgarh, Raipur in suo-motto review case No.80-1/2004. I.A. No.2199/2004 objection to the application for withdrawal of the writ petition has also been filed on behalf of the Intervener-Shri Shesh Narayan Shukla in which he has prayed that the petitioner should not be allowed to withdraw the writ petition.

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

I have heard Shri Diwakar learned counsel for the petitioner, Shri Satish Gupta, Deputy Government Advocate on behalf of the State/respondent No.1 to 3 and Shri Manindra Shrivastava, learned counsel for the Intervener-Shri Shesh Narayan Shukla.

At the outset, learned counsel for the petitioner submitted that he is not pressing the second part of the application that the petitioner may be allowed with a liberty to file fresh, if occasion so arises. Therefore, in view of the above submission made by learned counsel for the petitioner, the petitioner wants to withdraw this writ petition unconditionally. Learned counsel further argued that since the order which the petitioner has challenged has been set aside by the Registrar, Co-operative Societies, Raipur in exercise of his powers vide order dated 02.04.2004, therefore, nothing remains in this petition and the same has become infructuous. Therefore, the petitioner may be allowed to withdraw this petition.

Learned Deputy Gover ent Advocate for the State has not opposed the request of learn ounsel for the petitioner.

On the other hand Shrivastava, learned counsel for Intervener-Shri Shesh n Shukla has raised serious

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

objection that when this matter assailing the orders dated 21.03.2001, 22.10.2001 & 28.11.2001 passed by the Joint Registrar & M.P. State Co-operative Tribunal, Bhopal was pending before this Court, the Registrar, Co-operative Societies ought not to have passed the order dated 02.04.2004 and the Registrar has passed this order in suspicious circumstances. He further submits that the petitioner has made false statement before the Registrar that he has already withdrawn the petition. Therefore, the application for withdrawal of the petition (I.A. No.2172/2004) should not be allowed. Learned counsel for the Intervener relied upon the decision of the Hon'ble Apex Court passed in the matter of **State of Maharashtra and others Vs Ishwar Piraji Kalpatri and others** reported in **AIR 1996 SC 722** and he placed reliance on Paragraph-9 of the judgment. On the other hand, learned counsel for the petitioner placed his reliance on the judgment passed in the matter of **Shipping Corporation of India Ltd. V. Machado Brothers & Co.** reported in **JT 2004 (4) SC 25** .

First of all, so far the intervention application of the intervener is concerned, it has not been allowed. Moreover, the authority relied upon by learned counsel for the Intervener is not

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

applicable in the facts and circumstances of the present case, that was entirely different situation in which the Hon'ble Apex Court passed the order. In that case, after investigation a charge sheet was filed against the respondent for commission of the offence under Section 5(1)(e) of Prevention of Corruption Act, 1988 for possessing assets disproportionate to his known source of income, therefore, the respondent had filed a petition under Section 482 of the Code of Criminal Procedure & under Article 227 of the Constitution of India for quashing the said prosecution against him and the High Court quashed the said prosecution against which the State Government went in an appeal before the Hon'ble Apex Court and the arguments of the learned counsel for the parties were heard and during the course of the arguments when learned counsel for the respondents assessed that the adverse order may be passed against the respondent by the Hon'ble Apex Court then he made a submission that the respondent may be allowed to withdraw the original writ petition and that may be dismissed as withdrawn. In that situation the Hon'ble Apex Court had observed that:

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

"A party to the proceeding cannot be allowed, at this stage at least to take a chance and if he gets the impression that he will not succeed to seek permission to withdraw the original proceeding obviously with a view to re-agitate the same contentions which have been or may be, adjudicated upon, by a Higher Court before subordinate Court though in different proceedings. We strongly deprecate a practice like this, if it exists. This will be opposed to judicial discipline and may lead to unhealthy practices which will not be conducive."

Because in that case the writ petition was allowed by the High Court on merits then before the Hon'ble Apex Court when that order was challenged learned counsel for the respondents made a submission for withdrawal of the original petition which was not permitted by the Court whereas in the present case the petitioner has challenged and assailed the orders mentioned above and so far this Court has not decided this matter and it is still pending for adjudication and in the meantime, the Registrar,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Co-operative Societies vide order dated 02.04.2004 exercising his powers set aside the impugned orders, therefore, the request of the petitioner is that since his grievance stands vindicated by the order of the Registrar, therefore, nothing remains in this writ petition and the same may be dismissed as withdrawn. The petitioner was working as Chairman, District Co-operative Central Bank Ltd. Raipur and on 24.03.2001 respondent No.3- Joint Registrar issued a show cause notice to the petitioner regarding certain irregularities committed by him against which the petitioner had preferred a revision before the Co-operative Tribunal but the same was dismissed vide order dated 28.11.2002. The Joint Registrar passed the order removing the petitioner from the post of Chairman. These orders have been challenged in this writ petition and since the Registrar, Co-operative Societies, Raipur vide order dated 02.04.2004 has set aside the above order and the petitioner has already taken over the charge as Chairman of District Co-operative Central Bank Ltd, Raipur, in the circumstances, the petitioner has moved the application for withdrawal of the petition. The petitioner is the sole master of his litigation and nobody can compel him to pursue with the matter.	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	The petitioner cannot be forced to continue with the petition against his wishes. Moreover, by passing order dated 02.04.2004 by the Registrar this petition has become infructuous, no purpose will be served in allowing to continue the infructuous matter, as has been held by the Hon'ble Apex Court in the matter of Shipping Corporation of India Ltd. V. Machdao Brothers & others reported in JT 2004(4) SC 25. The intervention application of the Intervener has not been allowed so far and if he has any grievance against the order dated 02.04.2004 passed by the Registrar, he can avail the remedy available to him under law, if so advised. Since the petitioner wants to withdraw this writ petition unconditionally, therefore, the application (I.A. No. 2172/2004) is allowed and the petition is dismissed as withdrawn. Sd/- L.C.BHADOO Judge	
Roshan/-		

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